

From: Moriarty, Matthew [Matthew.Moriarty@TuckerEllis.com]
Sent: Monday, July 12, 2010 6:42 AM
To: Thompson, Fred; Carl@facslaw.com
Cc: Dean, Richard
Subject: FW: follow up

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Gentlemen,

Besides general follow up on our discussions, we need to address the questions I posed last week, contained below. I have a few meetings, but am here all day. I believe Dick is here all day too.

Matt

From: Moriarty, Matthew
Sent: Wednesday, July 07, 2010 2:26 PM
To: Carl@facslaw.com; fthompson@motleyrice.com
Cc: Dean, Richard
Subject: follow up

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Gentlemen,

I have two questions likely to be pertinent as we continue to talk.

1. What is your estimate of your PSC's expenses, and the reasonable value of services you would claim (or that you think would be awarded) given the current demand and offer? Our client will want to know the total expected payout for those who opt in.
2. What value would you place on the base case, the figure from which we would take grid deductions or you would add enhancements?

Thank you.

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From: Moriarty, Matthew [Matthew.Moriarty@TuckerEllis.com]
Sent: Thursday, July 15, 2010 8:34 AM
To: Thompson, Fred; Carl@facslaw.com
Cc: Dean, Richard
Subject: NEXT WEEK

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Fred and Carl,

I understand you will be arriving at TEW sometime near 11:00 a.m. next Monday. We look forward to seeing you. In the meantime, here are some topics, the discussions about which will be more fruitful if you know of them in advance:

- The entry criteria include a timely filed case. There have been many cases filed since 5/1/2010. We need a mechanism to assess the timeliness of filing, hopefully without the need for depositions on when they knew- or reasonably should have- about the recall or their harm.
- A level of sdc for the entry criteria.
- Item #6 of the entry criteria (on the May13 letter) is obviously an avenue to compensation which could be abused. We are going to propose that certain language must be included in affidavits. It is our understanding that you agree that a medical panel will review cases which do not automatically get into the grid based on sdc level or contemporaneous diagnosis of digoxin toxicity where the claimant then presents an affidavit. If and only if the medical panel concludes there was evidence of digoxin toxicity would such claims enter the grid. If there is no elevated sdc level or contemporaneous diagnosis and no affidavit is submitted- such claimants would not enter the grid and would receive no compensation.
- Another area of potential abuse is proof of defect. To your credit, most plaintiffs lawyers who chose to test tablets used reputable labs, like NMS. A small minority, however, have chosen labs which use unreliable methods, causing us to depose and challenge the lab, and hire our own experts on the subject. We do not intend to allow people to choose whatever lab they want and then claim they have proof of defect. We believe a certified lab following an acceptable test methodology is necessary.
- We believe the special master will need to understand the science. We also believe just dumping material on him to read is a poor way to meet that goal. We will propose a mini science presentation for the special master after he or she has read some basic position papers.
- We want to maintain some ability to address claims, possibly by submitting position sheets on them. This is in line with our belief that this is an economic resolution, and payment of claims is not required.
- We are going to encourage dismissal of Mylan as soon as possible.
- I have asked twice for an estimate of out of pocket PSC expenses, and for the price of a basic case in the grid (before add-ons or deductions). Can you provide that before Monday?

Best wishes.

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